<u>Summary of H.R. 1728</u>

<u>Title I (Residential Mortgage Loan Origination Standards)</u>

- <u>Federal Duty of Care</u>: All mortgage originators (including individuals as well as companies and banks that originate mortgages) will be subject to a federal duty of care that requires (1) licensing and registration, as applicable, under State or Federal law (including under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008), (2) presenting consumers with *appropriate mortgage loans* (*i.e.*, loans that a consumer has a reasonable ability to repay and for which (s)he receives a net tangible benefit (for refinancings), and that do not have predatory characteristics), (3) making full disclosures to consumers, (4) certifying to lenders compliance with mortgage origination requirements, and (5) including a mortgage originator's unique identifier in loan documents.

- <u>Steering Incentives/Yield Spread Premiums</u>: Yield spread premiums and other compensation that could cause mortgage originators (*i.e.*, mortgage brokers and bank loan officers) to "steer" applicants toward more costly mortgages are banned for <u>all</u> mortgage loans – the total direct and indirect compensation from all sources permitted to the mortgage originator may not vary with the terms of the mortgage loan (except for size of the loan and number of loans).

- <u>Liability</u>: A mortgage originator that violates the duty of care will be liable to a consumer for the greater of actual damages or an amount equal to three times broker fees plus costs (including attorney's fees).

- <u>Regulations:</u> The Federal banking agencies are assigned rule writing authority to implement aspects of this title.
  - <u>Discretionary Authority for All Mortgages</u>. The Federal banking agencies are authorized to address troublesome and abusive mortgage terms and practices that may arise in future through issuing joint regulations that address abusive, deceptive or unreasonable mortgage practices, and any other regulations necessary or proper to effectuate the purposes of Title I or to prevent evasion or circumvention thereof.
  - <u>Duty of Care Regulations</u>. The Federal banking agencies, in consultation with the Treasury Secretary and the Chairman of the State Liaison Committee to the FFIEC shall jointly prescribe regulations that further define the duty of care.
  - <u>Anti-Steering Regulations</u>. The Federal banking agencies, in consultation with the Treasury Secretary and the FTC, shall prescribe regulations that prohibit mortgage originators from (1) steering any consumer to a loan that the consumer lacks a reasonable ability to repay, does not provide a net tangible benefit in the case of a refinancing, or has predatory characteristics, (2) steering any consumer from a prime loan to a subprime loan, and (3) engaging in abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but different race, ethnicity, gender, or age.

<u>Title II (Minimum Standards for All Mortgages)</u>

- <u>Ability to Repay/Net Tangible Benefits:</u> Every residential mortgage loan will subject to two new Federal standards that apply to creditors, assignees and securitizers. At the time the mortgage is entered into, the creditor must make a reasonable, good faith determination:
  - that the consumer has a ***reasonable ability to repay*** the loan at a fully indexed fully amortizing rate, based on verified and documented information including the consumer's credit history, current and expected income, debt-to-income ratio, and other financial resources; and

- for refinancings, that the loan will provide a ***net tangible benefit*** to the consumer, based on information known or obtained in good faith by the creditor. The Federal banking agencies shall jointly prescribe regulations that define "net tangible benefit," and the bill provides that loans for which the cost of refinancing exceeds the newly advanced principal specifically do not provide a net tangible benefit.

- <u>"Qualified Mortgage" Safe Harbor.</u> A limited safe harbor provides that prime, fully documented 30-year fixed-rate mortgages that have no negative amortization or interest-only features are presumed to meet the ability to repay and net tangible benefit standards. This presumption is rebuttable. *Qualified mortgages* are defined as loans for which
  - the APR does not exceed an *average prime offer rate*, published by the Federal Reserve, by more than a specified percentage (1.5 percentage points for a first lien and 3.5 percentage points for a subordinate lien)
  - the income and financial resources of the consumer are verified;
  - the underwriting process is based on a fully-indexed rate;
  - the loan meets a combined debt-to-income (DTI) test prescribed by the Federal banking agencies; and
  - the loan has a fixed rate term of not less than or more than 30 years.

  The Federal banking agencies shall jointly prescribe regulations that carry out the purposes of the qualified mortgage provision and may revise the criteria for defining a qualified mortgage when necessary or appropriate.

- <u>Creditor Liability</u>: In addition to other remedies that a consumer may have against the creditor under the Truth in Lending Act, a creditor that violates the ability to repay or net tangible benefit standards is liable to the consumer for rescission plus the consumer's costs for the rescission (including attorney's fees) unless the creditor provides a cure within 90 days after receiving notice from the consumer.
  - *Cure* means a no-cost modification or refinancing of the loan to provide terms that would have satisfied the minimum standards if the loan had contained such terms as of the origination date, as well as the payment of costs that the consumer incurred as a result of the violation.

- <u>Assignee/Securitizer Liability (does not extend to trusts and investors)</u>: Except as provided below, for loans that violate the bill's standards (reasonable ability to repay and net tangible benefit), a consumer has an individual cause of action against assignees and securitizers for rescission of the loan and the consumer's costs for rescission (including attorney's fees), unless the assignee or securitizer provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer.
  - <u>Absent Parties</u>: If the creditor ceases to exist or is bankrupt, then a consumer may maintain a civil action against an assignee to cure a loan that violates the minimum standards. If the creditor and each assignee cease to exist or are bankrupt, then the same civil action may be maintained against the securitizer.
  - <u>No class actions</u> may be brought against an assignee or securitzer.

- <u>No investor liability</u>. In the case of loans held in pools for purposes of securitization, the terms *assignee* and *securitizer* specifically exclude the securitization vehicles that holds the loan, the loan pools, purchasers of the securitization vehicle, and investors in an instrument that represents an interest in such pool.

- Defense to Foreclosure: When the holder of a mortgage loan or anyone acting on behalf of the holder initiates a judicial or non-judicial foreclosure, (1) a consumer who has a rescission right under this bill may assert such right as a defense or counterclaim to foreclosure against the holder to forestall foreclosure, or (2) if the rescission right has expired, a consumer may seek actual damages (plus costs) against the creditor, assignee, or securitizer.

- Tenant Protections: Provides protections to tenants when the homes they rent go into foreclosure.
  - For foreclosures occurring after the date of enactment:
    - tenants with a lease have a right to remain in the unit until the end of the existing lease;
    - if a purchaser intends to use the property as a primary residence, the lease may be terminated and the tenant must receive 90 days notice to vacate; and
    - tenants without a lease or with a lease terminable at will under state law must receive 90 days notice to vacate.
  - For foreclosures involving Section 8 housing assistance contracts:
    - successors in interest are subject to the pre-existing lease and housing assistance payment contracts for Section 8 recipients;
    - foreclosure does not constitute good cause for termination of Section 8 tenancy; however, under certain circumstances, such as when the property is unmarketable while occupied or the subsequent owner will occupy the unit as a primary residence, the foreclosure may constitute good cause for terminating the lease; and
    - public housing agencies may pay utilities that are the responsibility of the owner and reasonable moving costs for Section 8 tenants – after taking reasonable steps to notify the owner – if the agency is unable to make housing assistance payments to successors in interest after a foreclosure.
  - None of these provisions affects any State or local law that provides longer time periods and/or other additional protections for tenants.

- Additional Standards: Includes a number of additional standards and requirements designed to protect consumers, including by—
  - prohibiting certain prepayment penalties;
  - prohibiting the creditor from directly or indirectly financing single-premium credit insurance in connection with a consumer mortgage loan;
  - prohibiting mandatory arbitration; and
  - requiring specific disclosures for loans that include negative amortization features.

- Effect on State Laws: Provides a unique Federal remedy for assignee/securitizer/securitization vehicle liability arising from a claim regarding lack of reasonable ability to repay and lack of net tangible benefit, but does not limit—
  - state laws that apply to creditors (including those that also act as an assignee, securitizer);
  - availability of state remedies based upon fraud, misrepresentation, deceptive acts and practices (as defined in the bill), false advertising or civil rights laws
    - for the assignee/securitizer/securitization vehicle's own conduct; or
    - in connection with that party's sale or purchase of mortgages or securities.

- Borrower Fraud: Removes civil liability of creditor, assignee, and securitizer and cancels the borrower's right of rescission if the borrower knowingly, willfully, and with actual knowledge furnished false information.

- Additional Disclosures: Requires additional disclosures to consumers in connection with mortgage loans, including
  - in the case of an adjustable rate loan, a notice at least six month before the expiration of a fixed introductory rate that explains the rate adjustment process and the consumer's alternatives; and
  - an annual notice regarding interest rate terms.

- Legal Assistance for Foreclosure-related Issues: Directs HUD to make grants on a competitive basis to state and local legal organizations to provide a full range of foreclosure related legal issues to low- and moderate-income homeowners and tenants.
  - Gives priority consideration in the awarding of grants to state and local legal organizations in the 100 metropolitan areas with the highest rates of home foreclosure; and
  - These legal assistance funds may not be used for class action litigation.

- Credit Risk Retention: Requires the Federal banking agencies jointly to issue regulations that require creditors, with respect to loans other than *qualified mortgages* (as defined above), to retain an economic interest in a material portion (at least 5 percent) of the credit risk of each such loan that the creditor transfers, sells, or conveys to a third party. A creditor may not directly or indirectly hedge or otherwise transfer the credit risk it retains under these regulations.

- GAO Study: Directs GAO to conduct a study to determine the effects of the bill on the availability and affordability of credit for homebuyers and mortgage lending, and submit a report to Congress within one year of enactment.

Title III (High-Cost Mortgages)

- This title expands the scope of and enhances consumer protections for "high-cost loans" under HOEPA by, among other provisions:
  - lowering the APR trigger from 10% to 8% over comparable Treasuries (codifies existing Board standard), except if a dwelling is personal property and the loan is less than $50,000;
  - lowering the points and fee trigger from 8% to 5% for transactions of $20,000 or more and including additional costs and fees in the trigger;
  - prohibiting the financing of points and fees;
  - prohibiting excessive fees for payoff information, modifications, or late payments;
  - prohibiting practices that increase the risk of foreclosure, such as balloon payments, encouraging a borrower to default, and call provisions; and
  - requiring pre-loan counseling.

Title IV (Office of Housing Counseling)

- Establishes an Office of Housing Counseling at HUD that will carry out and coordinate homeownership and rental housing counseling programs.
- Requires the launch of a national public service, multimedia campaign to promote housing counseling and the establishment of a website and toll-free hotline;
- Authorizes the issuance of homeownership and rental housing counseling grants to HUD-certified state, local and nonprofit counseling organizations; and
- Requires HUD to update the Mortgage Information Booklet to provide consumers with a greater understanding of the terms of the home buying process.

Title V (Mortgage Servicing)

- Requires borrowers with higher-cost and subprime loans to have accounts established in conjunction with their mortgages to provide protection against tax liens and the forced placement of hazard insurance, among other things.
- Forces lenders to provide written disclosures about the need to pay taxes and insurance premiums to all borrowers if borrowers decide to waive the creation of or choose to close their escrow accounts.
- Mandates the inclusion of escrow payments for taxes and insurance in any repayment analysis provided to consumers at the time of a quote on a mortgage, to ensure that lenders alert borrowers to all of the costs involved in owning a home.
- Updates the Real Estate Settlement Procedures Act to create new safeguards for borrowers, including detailing when the servicer can impose force-placed hazard insurance, mandating swifter responses to consumer written inquiries, increasing penalties for abuses, and requiring the prompt crediting of payments.

Title VI (Appraisal Activities)

- Establishes stronger, enforceable Federal appraisal independence standards with tough penalties, which will allow appraisers to act as independent referees to verify the value of the property for the buyer, the seller, the lender, and the investor, among others.
- Provides the Appraisal Subcommittee of the interagency Federal Financial Institutions Examination Council with a consumer protection mandate and enhances its ability to monitor the performance of State appraisal oversight agencies.
- Strengthens appraiser licensing and education standards, and establishes a Federal grant program to assist States in their appraisal regulatory activities.